



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 11, 2023

IN THE MATTER OF:

Appeal Board No. 626213

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination, holding the claimant ineligible to receive benefits, effective July 4, 2022, through August 15, 2022, on the basis that the claimant did not comply with registration requirements. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed October 18, 2022 (), the Administrative Law Judge overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a further hearing. Although necessary, the Judge did not offer the Commissioner of Labor an opportunity to appear and to participate in the hearing. The Board has determined to provide the Commissioner of Labor such an opportunity.

At the further hearing, the Commissioner of Labor should explain why the initial determination of failure to register was issued for the period of July 4, 2022, through August 14, 2022, while the claimant remained employed and performed work for the employer through that date.

Also, the Commissioner of Labor should produce all records from the Department

of Labor evidencing wages paid to the claimant as reported by the employer for the four quarters of 2022, and if there are no wages reported, evidence regarding any investigation by the Department of Labor for wages unpaid and owing to the claimant (and all others similarly situated) for the period after June 30, 2022.

Finally, the Commissioner of Labor should produce evidence of any instructions provided to the claimant regarding the filing of a Labor Standards complaint for unpaid wages.

All documentary evidence shall be produced at hearing for potential entrance into the record after an opportunity for confrontation and comment. The Administrative Law Judge will take such additional testimony and evidence necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER